

Before the Board of Zoning Adjustment, D. C.

Application No. 11593 of Seafarers Washington Building Corporation pursuant to Section 8207.2 of the Zoning Regulations for permission to use the premises located at 2929 Massachusetts Avenue, N. W., in the R-1-A District, Lot 808, Square 2198 as a non-profit office building as provided by Section 3101.415 of the Zoning Regulations.

HEARING DATE: February 13, 1974

EXECUTIVE SESSION: February 26, 1974

FINDINGS OF FACT:

1. The applicant requests permission to operate a non-profit office in the R-1-A District by converting a single-family detached residence containing 16,000 square feet into office space for the use of the Carnegie Endowment for International Peace which is a non-profit organization.

2. A report submitted to the record by Mr. James G. Banks, State Historic Preservation Officer for the District of Columbia, indicates that the residential building identified as 2929 Massachusetts Avenue, N. W., is located within the Massachusetts Avenue Historic District, which is listed on the District of Columbia inventory of historic sites.

3. Dr. Thomas L. Hughes, President of the Carnegie Endowment, testified at Public Hearing that eight off-street parking spaces, shielded from public view will be available on the site. This is approximately the number of parking places that would be required under comparable circumstances under the parking formula in the Zoning Regulations.

4. Section 3101.415 of the Regulations, subsection (B) requires that the amount and arrangement of parking spaces be adequate and so located as to minimize traffic impact on the adjacent neighborhood.

5. The Board finds that no goods, chattels, waiver or merchandise would be commercially created, exchanged, or sold therein, except for the sale of publications, materials or other items related to the purposes of such non-profit organization.

6. The Board takes notice of the fact that the subject square, No. 2193, is zoned R-1-A, for single-family detached residential use, the most restrictive category of residential zoning.

7. Square 2198 is improved by five other structures, all of which were designed as single-family detached residences.

8. The property abutting 2929 Massachusetts Avenue is improved by and occupied as a single-family detached residence.

9. The owner and resident of the abutting single-family detached residence at the rear of the subject site, Mrs. Edward B. Burling, Sr., 2900 Benton Place, appeared in person to oppose this special exception. Mrs. Burling testified that her residence has been in the Burling family since the 1920's. She testified that the conversion of the subject property from a residence to an office will adversely affect the use of neighboring properties in that 2929 Massachusetts Avenue, N. W. will not have as an office the amenities of a residence, and will be dark at night, and thus, will impair the residential character and feeling of the neighborhood. She testified that granting of this special exception would adversely affect property values.

10. Mrs. Vincent R. Murphy, who has owned and lived in the property at 2933 Benton Place, N. W., across the street from Mrs. Burling, since 1938, testified that she opposes the conversion of 2929 Massachusetts Avenue from single-family residential to office use. She reported sales of residences in the neighborhood for sums of approximately \$300,000 and stated that the construction of a residence only a block and a half away had been completed very recently by Lawrence Brandt for \$850,000. She considers that granting of this special exception would adversely affect these property values and the use of neighboring properties.

11. There was testimony on behalf of Sheridan-Kalorama Neighborhood Council that 2929 Massachusetts Avenue is the closest neighboring improved property across Rock Creek on Massachusetts Avenue to the formal boundary of the Sheridan-Kalorama Neighborhood Council. This neighborhood is bounded by Rock Creek Park, Connecticut Avenue, Florida Avenue and 22nd Street.

12. The subject site is just across the Charles Carroll Glover Bridge over Rock Creek from this Sheridan-Kalorama neighborhood.

13. As a result of the conversion of single-family residences to non-residential uses the Sheridan-Kalorama neighborhood has been saturated with institutional school uses, as found by this Board in Case No. 11184 concerning the property at 2200 S Street, N.W., and saturated with more than its fair share of chanceries and other office uses which are immune to compliance with municipal regulations as found by this Board in Case No. 7160 concerning property on Phelps Place, N. W.

14. The proposed conversion of this residence to office use will diminish the stable residential character of this square through the absence of residential occupancy after working hours, leaving the building dark at night, which will impair the residential "feeling" and amenability, as well as the actual security, of the neighboring properties, and this adverse effect will extend to the Sheridan-Kalorama neighborhood.

15. The Board considers significant the fact that the existing or proposed chancery offices across from the subject site on Massachusetts Avenue, Iran, Brazil and Italy, all have or will have on the same ground with them the embassy residence of the ambassador and his family -- a conforming R-1-A use. The fact that the ambassador is personally present on the site tends to lessen the adverse effect of chancery offices on the use of neighboring single-family residential property in this area. The Board notes that there is no residential use proposed in connection with the requested conversion of 2929 Massachusetts Avenue to the office of this non-profit organization, and considers that this fact would tend to aggravate the adverse effect of this conversion on the use of neighboring properties.

16. The conversion of 2929 Massachusetts Avenue from single-family residential use to office use can be expected to lead to substantially more automobiles being parked in and around the structure in order to provide transportation for employees working in the building than would be generated by a single-family living at the same location as well as substantially more callers, leading to increased traffic congestion and parking problems.

17. The Carnegie Endowment proposes to use the subject premises

as offices for research, seminars, writing and the publication of its scholarly journal. Once a year the Endowment would hold a reception for the diplomatic corps at the site, plus seminars the Endowment expects to spend approximately \$800,000 for improvements to the property.

18. Witnesses or counsel representing the Capitol Hill Restoration Society, Citizens Association of Georgetown, Dupont Circle Citizens Association and the Sheridan-Kalorama Neighborhood Council opposed the special exception and were admitted as intervening parties in the case. All supported and adopted the motion to dismiss of the Capitol Hill Restoration Society, which alleged that the Section of the Regulations under which applicant filed was not promulgated as required by law.

19. Mr. Homer J. McConnell of 2737 Woodley Place, N. W., stated that the Cleveland Park Citizens Association supported the applicant's request.

#### CONCLUSIONS OF LAW:

Based upon the above Findings of Fact, the Board is of the opinion that above application must be denied. The Board is of the opinion that the applicant has complied with all of the requirements of this newly created special exception except condition (A), which specified that such a non-profit organization will not adversely affect the use of neighboring properties. The Board further concludes, pursuant to Section 8207.2 of the Regulations, that the applicant's request is not in harmony with the general purpose and intent of the Zoning Regulations and maps and will tend to adversely effect the use of neighboring property.

#### SEPARATE OPINION OF LILLA BURT CUMMINGS, ESQUIRE

The apparent and alleged (at the Public Hearing) infirmities of the Order, and its promulgation, (including failure to publish notice timely in the D. C. Register as required under the D.C.A.P.A. and the JUNGHANS case; the failure to publish under the correct Regulation Section (#3101.415); and the failure to include language in the attempted promulgated Regulation in the special exception table following 8207.2 of the Regulations), result in a lack of jurisdiction in the Board of Zoning Adjustment,

and I therefore vote to DENY on the grounds that there is no validly promulgated Regulation (the cited errors invalidate the Order so that this Board has no jurisdiction, said jurisdiction only capable of being predicated upon and flowing from a validly enacted Regulation); and on the additional ground that the attempted promulgation of the instant Regulation (which is, in fact, a private bill), would have the effect, were it otherwise valid, of throwing open vast areas of the city (prime residential areas) to assault from business, something abhorrent to the citizenry, the individual home owner and taxpayer who should be left unassaulted to enjoy the residential tranquility of his neighborhood, free from invasion by business use (the major distinction between profit and non-profit business use being that the latter worsens the tax load on the rest of the homeowners and further depletes the city's tax base), in harmony and conformance with the zone plan and maps; and finally, in agreement with the Chairman, on the grounds that the Congress, in enacting the Chancery Act of October 13, 1964, excluded from this neighborhood all chanceries and office buildings of foreign governments and in so doing expressed a clear Congressional intent and policy, which intent and policy is wholly compatible with and in accord with those governing Statutes and Regulations by which this Board is bound, that office buildings and office uses have or are likely to have an adverse effect on all residentially zoned areas (except R-5-C and R-5-D); otherwise, this legislation would be tantamount to invidious discrimination against foreign governments.

SEPARATE OPINION OF SAMUEL SCRIVENER, JR.

The property involved in this appeal is zoned for single-family use, and all of the objectives, restrictions and safeguards applicable to that zoning attached to it. The adjacent and neighboring single-family home owners strongly object to the intrusion of an office use into their neighborhood and the majority members of the Board believe that their views should be given considerable weight as they represent the entire neighborhood other than foreign embassies.

The Congress of the United States, in enacting the Chancery Act of October 13, 1964, excluded from this neighborhood all chanceries and office buildings of foreign government, and it is the view of the majority members of the Board that this legislation expressed a Congressional intent and policy that office buildings

have an adverse effect on all residentially zoned areas except those zoned for medium and high-density apartment house use; otherwise the legislation would appear to be invidious discrimination against foreign governmental use.

We are not impressed by the argument that the price asked by the present owner excludes the possibility of single-family use, as this, like other economic questions, is not properly to be considered by this Board in cases not brought under the variance statute. The house and grounds are not unduly large for the neighborhood. In fact, the record shows that a larger single-family home is now under construction within a block of this property. There is nothing in the record to show that at a reasonable price the property cannot be sold for use within the existing zoning, including the residence of an ambassador, which would be fitting to the neighborhood.

Once permitted, an office use cannot be effectively controlled and we see no reason to impose on this neighborhood the usual office use attributes of employees going and coming, the view and noise of office use through open windows the coming and going of visitors and their automobiles, the holding of seminars and meetings, and all of the usual concomitants of office use.

We therefore hold that the proposed use would have an adverse effect on the neighborhood and deny the application.

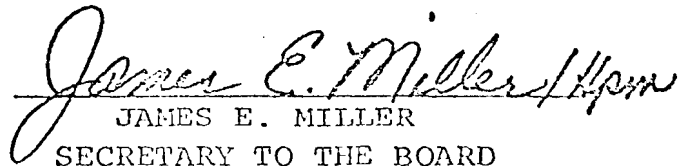
ORDERED:

That the above application be DENIED.

VOTE: 3-2 (Mr. McIntosh and Mr. Hatton dissenting.)

BY ORDER OF THE D. C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:

  
JAMES E. MILLER  
SECRETARY TO THE BOARD

FINAL DATE OF ORDER: MAY 10 1974